

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

Stefan Woodson,

Plaintiff,

versus 3:13CR134

City of Richmond, et al.,

Defendants

Before: HONORABLE ROBERT E. PAYNE
Senior United States District Judge

Pre-trial conference

August 21, 2013
Richmond, Virginia

Gilbert F. Halasz, RMR
Official Court Reporter
U. S. Courthouse
701 East Broad Street
Richmond, Virginia 23219
(804) 916-2248

1 THE COURT: All right.

2 This is Woodson against the City of Richmond and a
3 number of other people, 3:13 CV 134.

4 Starting here and going around the table, please
5 put your name on the record and tell me who you
6 represent.

7 MS STINER: Elyse Stiner, counsel for the
8 plaintiff, Stefan Woodson.

9 MR. CARROLL: Seth Carroll, counsel for plaintiff.

10 MS CARROLL: Lauren Carroll, counsel for the
11 plaintiff.

12 MR. ETHERINGTON: Bill Etherington, counsel for
13 Mr. McRae.

14 MR. CORRIGAN: David Corrigan, counsel for the
15 City of Richmond.

16 MR. ELLIOTT: Kyle Elliott, City of Richmond.

17 MR. ROSEN: Jeff Rosen, counsel for Sheriff Woody.

18 MR. McNELIS: Edward McNelis, counsel for Dr. Moja
19 and Correct Care Solutions.

20 MR. McBETH: Isaac McBeth, counsel for Dr. Moja
21 and Correct Care Solutions.

22 THE COURT: Mr. Etherington, who do you represent?

23 MR. ETHERINGTON: Ken McRae. He is one of the
24 staff in Sheriff Woody's office.

25 THE COURT: Okay.

1 According to our records there is a pending a
2 motion by the city to dismiss the Sheriff's cross claim
3 filed against the City; is that right?

4 MR. CORRIGAN: Yes, sir.

5 THE COURT: Any other motions pending now?

6 MR. CORRIGAN: No, sir.

7 THE COURT: All right.

8 Have you all had any settlement discussions?

9 MR. CARROLL: We discussed settlement, and I think
10 agreed that at this time, prior to any discovery,
11 really, that we would have to address that issue later.
12 We weren't in a position to have formal settlement
13 discussions.

14 THE COURT: I think you are.

15 MR. CARROLL: Okay.

16 THE COURT: The law is fairly well settled in this
17 area. You ought to know the case by now and how to
18 figure it out. You don't let people get in this
19 condition. The Sheriff and the City have a
20 responsibility for maintaining the jail, depending upon
21 what facet their responsibility is linked to it. You
22 didn't do it. You know you didn't do it. The City has
23 been after -- the people have been after the City for
24 years to take care of it. They finally have gotten a
25 new jail being built. In the meantime, it is up to the

1 Sheriff and the City to work out a way to keep the
2 place cool if the heat had anything to do with this. I
3 don't know whether it did or not. It looks like from
4 the medical reports it did. And you need to get about
5 settling the case. There isn't any reason to spend
6 anybody's money litigating this issue. The question
7 is, what are the damages, really.

8 What are your damages?

9 MR. CARROLL: Significant.

10 THE COURT: You know what they are.

11 MR. CARROLL: In terms of money?

12 THE COURT: In terms of everything. What are
13 you -- you have got to do your rule 26 disclosures,
14 don't you?

15 MR. CARROLL: Yes, Your Honor.

16 THE COURT: Have you done them?

17 MR. CARROLL: I have.

18 THE COURT: What did you disclose were your
19 damages? That is what you have to do.

20 MR. CARROLL: We currently have \$300,000 in
21 medical bills -- and some change.

22 THE COURT: Okay.

23 MR. CARROLL: We are conducting a life care plan.

24 THE COURT: What is his condition?

25 MR. CARROLL: He is in a wheelchair, has severe

1 ataxia, 24 hours a day in-home care, according to his
2 doctor, Dr. Walker, at MCV. I don't have formal
3 numbers from that.

4 THE COURT: How come you don't have that yet?

5 MR. CARROLL: My life care planner hasn't given me
6 formal numbers yet. Given me some estimates.

7 THE COURT: What is your ballpark?

8 MR. CARROLL: Two to three million dollars.

9 THE COURT: That is a big range.

10 MR. CARROLL: It depends.

11 THE COURT: Why was Mr. Woodson in the jail?

12 MR. CARROLL: In the jail for assaulting a police
13 officer.

14 THE COURT: Had he been tried, or was he pretrial
15 detention, or --

16 MR. CARROLL: Inmate.

17 THE COURT: He was being held under the eighth
18 amendment?

19 MR. CARROLL: Had been convicted, yes, eighth
20 amendment.

21 THE COURT: Okay.

22 MR. CARROLL: Five-year felony conviction, six
23 months time.

24 THE COURT: All right. How old was he?

25 MR. CARROLL: He is 43.

1 THE COURT: Now or then?

2 MR. CARROLL: At the time I believe he was 42.

3 THE COURT: Okay. What is his life expectancy?

4 MR. CARROLL: Around 40 years. A little shorter.

5 THE COURT: Any pre-existing injuries?

6 MR. CARROLL: Had a bullet in his spine, but no
7 injuries per se. He has high blood pressure,
8 chronically high blood pressure. Taking medicine for
9 that.

10 THE COURT: Okay. How much -- so you need to
11 formulate a demand so that they can get about the
12 business of assessing how they are going to deal with
13 it.

14 MR. CARROLL: I will be happy to do so by the end
15 of the week, Judge.

16 THE COURT: Have you sent them all the medical
17 records yet?

18 MR. CARROLL: They have all the medical records.

19 THE COURT: How long ago did you send it to them?

20 MR. CARROLL: Month or two ago. Not sure of the
21 exact date when we did our initial disclosure.

22 THE COURT: Any dispute over the nature of what
23 caused his death? I mean his injuries.

24 MR. CARROLL: Not from my perspective.

25 THE COURT: I mean, have they articulated any to

1 you?

2 MR. CARROLL: They have not articulated any
3 dispute as to what caused the injury in terms of being
4 a heat stroke. I think they have articulated a dispute
5 with respect to responsibility.

6 THE COURT: Well, that is what the jury will sort
7 out and lay the wood on whoever it is supposed to, I
8 suppose.

9 MR. CARROLL: Yes, Your Honor.

10 THE COURT: What is the relationship of McRae to
11 Correct Care?

12 Or is he the Sheriff's man?

13 MR. ETHERINGTON: He is a major in the Sheriff's
14 office. Didn't have any relationship to C.C.S.

15 THE COURT: Okay.

16 MR. ETHERINGTON: In fact, he is in the office,
17 Judge, not out on the floor.

18 THE COURT: Okay.

19 So, have you all talked about any rule 26
20 conference about the number of witnesses that it will
21 take?

22 MR. CARROLL: We have, Your Honor.

23 THE COURT: And then discovery and so forth?

24 MR. CARROLL: Yes, Your Honor.

25 THE COURT: Where do you stand on that?

1 MR. CARROLL: We propose 20 depositions. I am not
2 sure of the number of witnesses that the defendants are
3 going to call. I expect to have ten to 15 witnesses
4 for Mr. Woodson.

5 THE COURT: Well, have you talked to them about
6 the witnesses they are going to have?

7 MR. CARROLL: We have talked about the number, not
8 about the specific.

9 THE COURT: How can you talk about a number if you
10 don't know who they are? Because then if there is
11 overlap the numbers change, you see.

12 MR. CARROLL: Yes, they have all provided names of
13 people with potential information.

14 THE COURT: And have you ascertained that they are
15 going to call the same people or different people?

16 MR. CARROLL: I have not ascertained that yet.

17 THE COURT: What do you think? Who is going to
18 speak for the Sheriff?

19 MR. ROSEN: Judge, Jeff Rosen for the Sheriff.

20 I believe we will be calling the involved, deputy
21 involved with Mr. Woodson. The fact is that the
22 medical doctor will call their own doctor in their
23 processing.

24 THE COURT: Processing what? This didn't happen
25 during processing. This is while confined. Who are

1 the ones that ignored him? Have you got who is on duty
2 when that happened? You have got identified --

3 MR. ROSEN: We have identified those.

4 THE COURT: -- and given them to the plaintiff?

5 MR. ROSEN: Identified them, provided initial
6 disclosures. The evidence was nobody ignored him. His
7 condition was forwarded on to the medical department.

8 THE COURT: Forwarded when? is what makes a
9 difference, Mr. Rosen.

10 MR. ROSEN: I agree with you, Judge.

11 THE COURT: And according to the allegation in the
12 complaint, it was, if it was forward it was forwarded a
13 day late and a dollar short, it looks to me like. If
14 they can prove what they said.

15 You know, the other thing is, this isn't the first
16 time this happened over there. This kind of thing
17 happens over there, unfortunately, more often than it
18 should. I have had at least two cases similar to this.
19 And one of them was several years ago. I can't
20 remember the name of it. I want to say it was Brown,
21 but I am not sure. And so people are on notice of the
22 problems, and there has been -- I think it is in
23 Brown -- it may have been in another case -- there is a
24 long history of litigation over the inadequacy of the
25 jail. The City has turned a blind eye to it. Haven't

1 done a thing until recently. Every once in a while
2 they get smacked with a suit and they study it. And
3 the Sheriff -- I don't know what he has done about it,
4 but I know Sheriff Mitchell sued the City to try to get
5 them to do something about it. They agreed to do
6 something about it and didn't do anything to speak of
7 except study it some more. Study, study, study. In
8 the meantime people are getting sick and hurt. It is
9 over-crowded. It is built for 800 people and they have
10 1,800 or 1,600 people in there. And it is outrageous.

11 When's the new jail going to be completed?

12 MR. ROSEN: 2014.

13 THE COURT: Actually going to be completed?

14 MR. ROSEN: That is what I am told. This was
15 supposed to be opened in 2014.

16 THE COURT: In the meantime everybody knows that
17 something bad is going on over there. You need to take
18 interim measures such as putting in blowers, changing
19 people around, figuring out other places to put them.
20 The time has come. You can't stick -- you can't any
21 longer stick your head in the sand and say, oh my
22 goodness, terrible situation. And the City says, oh,
23 it is a terrible situation.

24 So, between you have you sorted out, the defense,
25 how many witnesses and compared it to the number they

1 gave you, and figured out what a total number of
2 witnesses are going to need to be deposed? Have you
3 done that yet?

4 Anybody?

5 MR. CORRIGAN: I don't think we have a specific
6 number. I think when he proposed 20, we thought that
7 was around the number for everybody.

8 THE COURT: You mean includes everybody?

9 MR. CORRIGAN: We think so. Not including
10 experts.

11 THE COURT: How many experts are you going to
12 have?

13 MR. CARROLL: Four, I believe, Your Honor.

14 THE COURT: On what topic?

15 MR. CARROLL: I have an expert in applied
16 climatology.

17 THE COURT: What is that, climatology?

18 MR. CARROLL: He has done work with some cities,
19 like Philadelphia, for instance, to help public housing
20 in the summer time. Just testifies about the problems
21 with no air conditioning and hot conditions in these
22 older buildings. Has got experience with that.

23 THE COURT: Don't most jurors know what happens
24 when you get in a closed building with no fan in the
25 heat of summer in Richmond, Virginia if you live in

1 this area?

2 MR. CARROLL: I hope so.

3 THE COURT: Why do you need an expert to hear
4 about what happens, then? Or are you going to have him
5 testify about what you do to ameliorate those
6 circumstance?

7 MR. CARROLL: Combination of the two. How the
8 conditions in the jail likely are, and what should be
9 done. What could be done about it.

10 THE COURT: So actions could have been taken to
11 reduce the problem.

12 MR. CARROLL: Which he has experience with helping
13 cities.

14 THE COURT: All right. And another expert.

15 MR. CARROLL: Other experts would include a
16 correctional medicine expert.

17 THE COURT: What is that person going to deal
18 with?

19 MR. CARROLL: Talk about the standard for
20 providing adequate care and the Constitution in the
21 jail and how the defendants failed to do --

22 THE COURT: I don't think he can testify about the
23 Constitution.

24 MR. CARROLL: Sorry.

25 THE COURT: He might be able to testify about what

1 is the standard of care in the area for treating
2 inmates. Or people in confinement. But, the
3 constitutional part I don't believe we need anybody on
4 that, do we?

5 MR. CARROLL: Did not mean to suggest he was going
6 to testify about the Constitution.

7 THE COURT: Okay.

8 All right.

9 So that is sort of the standard of care expert, is
10 he?

11 MR. CARROLL: Yes, Your Honor.

12 THE COURT: All right.

13 And then --

14 MR. CARROLL: Life care planner.

15 THE COURT: Now, those people, you know, they have
16 some of the most remarkable capacity to demonstrate
17 what people need. And you could probably keep the
18 royal family in England for the amount of money some of
19 them lay out and think is necessary. And jurors don't
20 pay much attention to that, because they can scope out
21 and have good common sense, you know, about what
22 actually it takes to take care of somebody in a
23 reasonably good way. So, maybe you better make sure
24 your life care planner doesn't go off the reservation.

25 MR. CARROLL: He is very conservative in choosing

1 that --

2 THE CLERK: Three or four million a year?

3 THE DEFENDANT: -- charge. He needs

4 24-hours-a-day care.

5 THE COURT: I will take the job.

6 MR. ROSEN: I thought you meant total.

7 MR. CARROLL: Sorry. Total. Not per year.

8 THE COURT: For his life?

9 MR. CARROLL: Sorry. No. A year.

10 THE COURT: Okay. Anything else?

11 MR. CARROLL: Couple treating physicians is all we

12 have beyond that primary care doctor. And likely

13 Dr. Walker.

14 THE COURT: Is that the guy at VCU?

15 MR. CARROLL: Yes, Your Honor.

16 THE COURT: And they are going to the extent --

17 they are testifying what they did to treat him. They

18 are not experts -- to the extent they testify about the

19 future and what life holds in the future and the

20 diagnosis and progress for the future they are going to

21 have to do a report, you know.

22 MR. CARROLL: Yes. I can share, Your Honor --

23 THE COURT: You read the Chameleon article?

24 MR. CARROLL: Have not.

25 THE COURT: It is good reading.

1 MR. CARROLL: It is on my desk top, Your Honor.

2 THE COURT: So what is the City's defense here?

3 MR. CORRIGAN: Your Honor, Sheriff Mitchell -- you
4 mentioned 2004 -- you made a lot of findings there.
5 Certain themes, frankly, continued to be problems.
6 There were a number of studies that didn't lead
7 anywhere. Since this incident I believe occurred
8 summer of 2012. In the summer of 2011 the City
9 air-conditioned the mess hall where all the guys are
10 taken. And also the kitchen.

11 THE COURT: Where they eat?

12 MR. CORRIGAN: Yes. Taken --

13 THE COURT: What do you mean?

14 MR. CORRIGAN: Three times a day everybody goes in
15 there.

16 THE COURT: Oh.

17 MR. CORRIGAN: The area is air-conditioned where
18 people have an opportunity to be. Also the kitchen and
19 laundry, two of the hottest in the building. They have
20 air conditioning and --

21 THE COURT: Air conditioned the laundry?

22 MR. CORRIGAN: They did. Again, the concern was
23 how hot it got there and the heat emanated out from
24 there. So that positive steps have been taken. The
25 place is not the same in 2010 as the incident that

1 occurred, as it had been throughout. There is no
2 Constitutional right to air conditioning, but there is
3 a Constitutional right to not be treated with
4 deliberate indifference. And the City's position is
5 they have not been treated with deliberate indifference
6 in that time frame.

7 THE COURT: Your argument is that the fact that
8 you air conditioned the mess hall and the kitchen and
9 the laundry somehow shows that you have paid attention
10 to the problems in the living area.

11 MR. CORRIGAN: Yes, it provides at least most of
12 the people going to the mess hall three times a day,
13 they are out of that condition into a cooler condition.

14 THE COURT: What have you done to take care of
15 people who have high temperatures like this, this guy
16 was diagnosed with? What did Dr. Moja do with a 102.3
17 fever? That is an extremely high fever. And, you
18 know, I would assume the doctor knows that. If he
19 doesn't, I'm not quite sure why he is practicing
20 medicine. But when I had a 102.3 fever recently I was
21 hospitalized to reduce it. And in the process I was
22 told that 102, I think 102.5, whatever it was, was a
23 very high fever for an adult. The doctor ought to know
24 that. You have got to put people like that somewhere
25 else. You have got to do something with them. The

1 "take a Motrin and call me back in two days" approach
2 is not going to sit well with the jury. It really
3 isn't.

4 Why did you sue McRae? What did he do wrong?

5 MR. CARROLL: He is the director of operation at
6 the jail. Has been involved in the prior cases, and
7 has, in our opinion, has a part in making sure the
8 operations -- equipped the deputies, who we don't know
9 the specific ones that may or may not have done bad
10 things at this point, but to make sure that they are
11 operating the jail in a safe manner. That is why we
12 named him.

13 THE COURT: Well, you now have the names of each
14 of the deputies who were on duty. And do you have what
15 their duties were at the time period?

16 MR. CARROLL: I would be probably speaking with
17 ignorance. I don't believe so.

18 THE COURT: Give him the names of all the deputies
19 who were on duty on the day in issue. What are they?
20 How many of them? About six days, five days?

21 MR. CARROLL: Between July 5 and 4. Four days.

22 THE COURT: Everybody on duty from the third of
23 July to the day after. And the jobs they had and where
24 they did them. And file that in writing. And give
25 that to them.

1 What is today?

2 MR. CORRIGAN: Tuesday or Wednesday.

3 THE COURT: Give them by next Monday.

4 MR. ROSEN: Next Monday.

5 THE COURT: Monday.

6 MR. CARROLL: Thank you, Judge.

7 THE COURT: You need to start looking at and
8 figuring out who you are going to lay the wood on and
9 see who was doing what so that they can have an
10 intelligent approach to who they are going to defend
11 and how they are going to defend the case. At least in
12 the Sheriff's office.

13 The City has a different situation. But at least
14 in the Sheriff's office they are entitled to know that.

15 MR. ROSEN: Could it be next Friday? My contact
16 for the jail is out of town this week. I can't get it
17 done to next Friday.

18 THE COURT: All right.

19 What day is that?

20 MR. CARROLL: 30th, I believe, Judge.

21 THE COURT: Okay.

22 MR. ROSEN: That should be no problem. By the
23 30th. Thank you.

24 THE COURT: That is by day and by shift. Lay it
25 out for them.

1 MR. ROSEN: We will do, Judge.

2 THE COURT: So they know who was where when.

3 MR. ROSEN: We will do that.

4 THE COURT: You know just because somebody is on
5 duty doesn't necessarily mean they have any
6 responsibility. You understand that.

7 MR. CARROLL: I agree with that, Judge.

8 THE COURT: Okay.

9 All right.

10 Okay. Now, do you want in your suit against, the
11 cross claim against the City, are you seeking
12 contribution, indemnity, both, or what? You -- they
13 moved to dismiss the cross claim. I am having trouble
14 understanding what claim, what of the counts you are
15 proceeding under to assert a cross claim and what you
16 want to recover, either indemnity or contribution.

17 So, can you tell me which ones you are proceeding
18 under?

19 MR. ROSEN: Proceeding on 1983 as an allegation.

20 THE COURT: Which count? Take the number.

21 MR. ROSEN: Okay.

22 THE COURT: Let's see. We have got their amended
23 complaint.

24 MR. ROSEN: There is an amended complaint, Judge.

25 THE COURT: I don't know that I have that.

1 MR. ROSEN: I don't have it with me.

2 THE COURT: First amended complaint. Yes, I have
3 it. Your cross claim seeks what against whom and why?

4 MR. ROSEN: Okay. Judge, it is seeking indemnify
5 against the City because under Virginia law, as
6 outlined, the City is the one responsible for
7 maintaining the air conditioning and ventilation system
8 in the jail. So, the allegation, I understand, is that
9 that is a part and parcel of the claim. That because
10 the jail, the temperature in the jail was hot that is
11 what caused Mr. Woodson's heat exposure and subsequent
12 brain injury. And that it is our position that that
13 part of management of the facility is the City's
14 responsibility under Virginia law, as you so held in
15 the Mitchell case. So therefore if we are sued we are
16 seeking contribution and/or indemnification from the
17 City because that is their responsibility.

18 THE COURT: I understand that point. I am asking
19 you this. Of the claims the plaintiff asserted in the
20 complaint, amended complaint, which of those do you
21 believe, if there is a liability that attaches to you,
22 gives you a right to -- does the right to indemnify
23 arise under?

24 MR. ROSEN: I understand --

25 THE COURT: I don't know from your papers. I

1 can't tell. There is this general assertion and then
2 there is a co-mingling of the terms "contribution" and
3 "indemnity." They are distinctly different legal
4 concepts with distinct different legal ramifications.
5 Particularly in the 1983 case. Because most courts
6 have held contribution doesn't even apply in cases, not
7 as in 1983. So I need to know that. I can't proceed
8 on your papers.

9 MR. ROSEN: Would you like me to file a brief?

10 THE COURT: I would. When would you like to do
11 that?

12 MR. ROSEN: Two weeks would be great.

13 THE COURT: Supplemental brief. It is a motion to
14 dismiss, isn't it?

15 MR. ROSEN: Yes.

16 THE COURT: It is the City's motion to dismiss,
17 right?

18 MR. ROSEN: Correct.

19 THE COURT: That would be -- what day did you
20 want, sir?

21 THE CLERK: Two weeks would be September 4, from
22 today.

23 THE COURT: That is Labor Day weekend.

24 MR. ROSEN: How about three weeks, Judge?

25 THE CLERK: Do you want to do three? That is

1 September 11.

2 THE COURT: Ten is a Tuesday.

3 THE CLERK: Yes, sir.

4 THE COURT: Let's do ten.

5 MR. ROSEN: Thank you, Judge.

6 MR. CORRIGAN: Do I have a chance to respond?

7 THE COURT: No, you don't get any response.

8 MR. CORRIGAN: Thank you.

9 THE COURT: All right.

10 When do you want to respond?

11 MR. CORRIGAN: I think we should be able to
12 respond certainly within ten days.

13 THE COURT: So that is September 20; is that a
14 weekend?

15 THE CLERK: September 20th is Friday.

16 THE COURT: Okay. All right. That is your reply.

17 All right. And if I need oral argument, I will
18 ask for it.

19 So have you all talked about a trial date?

20 MR. ROSEN: We did, Judge.

21 THE COURT: When do you want to try this?
22 December 21?

23 MR. ROSEN: We are looking to February. Looking
24 at February 18. That seems to be a date available for
25 everyone.

1 THE COURT: February 18th? That is a long time.

2 Why do you need that much time? The case has been

3 pending since the amended complaint was filed on

4 March 13. I don't remember what the date was.

5 THE CLERK: March 1 of 2013.

6 THE COURT: Thank you. Why do you need February?

7 MR. ROSEN: The problem, only problem is we are

8 not able to propound discovery because we haven't had

9 the initial conference. We exchanged disclosures, but

10 not able to propound discovery.

11 THE COURT: You are going to do that when?

12 Monday?

13 MR. ROSEN: Immediately.

14 THE COURT: Yes.

15 MR. ROSEN: So that is what held it up, in all

16 candor.

17 THE COURT: That is a fault of the Federal Rules,

18 to tell you the truth.

19 MR. ROSEN: I agree with you.

20 THE CLERK: Utterly ridiculous. You could have

21 been ready by now.

22 MR. ROSEN: Absolutely.

23 THE COURT: I think I will eliminate that from the

24 pretrial and say file discovery once the case is filed.

25 Do you find, as I do, that -- and be honest -- that it

1 is a hinderance to wait until you have a pretrial
2 conference --

3 MR. ROSEN: Absolutely.

4 THE COURT: -- to do discovery with it?

5 MR. ROSEN: Absolutely.

6 THE COURT: There is a fight over it, over you can
7 bring it in for a hearing and get it done. I think the
8 pretrial order should be changed to take care of it.

9 MR. CORRIGAN: Once you have disclosures exchanged
10 and the parties have had that, if for no other reason
11 not to start discovery.

12 THE COURT: So that also means starting the
13 initial disclosure process earlier, too.

14 MR. ROSEN: Um hum.

15 Well, that is still a long time. But it seems to
16 me --

17 How long do you think it will take to try the
18 case if it goes to trial?

19 MR. McNELIS: Four or five days.

20 MR. CORRIGAN: The rest of the week, to the 21st.
21 Four days.

22 THE COURT: Is everybody on board with that date?

23 MR. McNELIS: Yes, sir.

24 MR. CARROLL: Yes, Your Honor.

25 THE COURT: All right.

1 I think -- well, what is President's Day. Is that
2 a holiday?

3 MR. ROSEN: 17th, Judge.

4 MR. CORRIGAN: If we started after --

5 THE COURT: Well, it looks to me like it is
6 better. Any reason you can't start on Flag Day? That
7 is the 24th of February.

8 MR. CARROLL: That was my conflict day. A jury
9 trial on the 25th that takes that week up.

10 THE COURT: The problem I have is you break up the
11 jury's life because this case, if it goes into the
12 deliberations and everything, it is going to take the
13 jury, on your schedule it is going to take them over
14 into the next week. That is what bothers me about the
15 19th. Maybe we can go earlier.

16 MR. CARROLL: Judge, the 24th would be okay. I
17 can probably prep a colleague to try that one-day jury
18 trial.

19 THE COURT: Would you rather do that?

20 MR. CARROLL: Fine.

21 THE COURT: I don't want the jury to have this
22 problem. That is the only thing. All right.

23 So February 24 starting at 9:30. Initial pretrial
24 conference -- I mean final pretrial conference on
25 February -- I have February 18th at 10:00 o'clock. Can

1 you do that?

2 MR. McNELIS: Yes, sir.

3 MR. CORRIGAN: Yes, Judge.

4 MR. ROSEN: Yes, Your Honor.

5 THE COURT: All right.

6 All the dates in the pretrial schedule will be
7 keyed to the date of the final pretrial conference, not
8 the trial date.

9 All right.

10 Such as designating witnesses, et cetera.

11 Judge Novak has had experience in a similar case,
12 a plaintiff named Sleeper, I believe. Were you all in
13 that case?

14 MR. CORRIGAN: Yes, sir.

15 MR. ROSEN: Yes.

16 THE COURT: I think I am going to ask Judge Novak
17 to handle the settlement in this case. So you all need
18 to get with him.

19 MR. ROSEN: Judge Lauck was settlement judge in
20 that case. Judge Lauck settled the case and was
21 actually very instrumental.

22 THE COURT: She did it?

23 MR. ROSEN: She did.

24 MR. CORRIGAN: Novak did the discovery issues in
25 that case, but did not do the settlement.

1 MR. ROSEN: Judge Lauck did.

2 THE COURT: Then since she is the one that knows
3 about the settlement, I will let her do that then.
4 Okay.

5 I will do that.

6 You all go on and get on her docket now, because
7 she keeps a busy docket.

8 MR. CORRIGAN: Do that before we leave.

9 THE COURT: You can go down and talk to her office
10 and see if she is willing to put you on. I will get
11 the order out tomorrow.

12 Anything else you need to deal with?

13 MR. McNELIS: No, Your Honor.

14 MR. ROSEN: No, Your Honor, thank you very much.

15 MR. CORRIGAN: Your Honor, there is a protective
16 order.

17 THE COURT: Do you have it?

18 MR. ROSEN: Endorsed by all counsel, Judge.

19 THE COURT: Does it exclude the destruction or
20 return of documents, exhibits, in the court?

21 MR. CORRIGAN: I don't remember.

22 THE COURT: Which paragraph is that?

23 MR. CORRIGAN: It would be near the end.

24 THE COURT: I have amended it in paragraph 14 to
25 say at the beginning, "excluding documents filed with

1 The Court." What is the date? Twenty-one. All right.

2 MR. CORRIGAN: For my edification, to make sure I
3 don't make that mistake again, is that so that The
4 Court does not have any obligation to be involved with
5 it?

6 THE CLERK: No, it is so you don't come over here
7 and try to destroy the documents of the court, which we
8 have actually had happen.

9 MR. CORRIGAN: Okay.

10 THE COURT: Somebody came in and asked the clerk
11 for the documents because they wanted to destroy them
12 pursuant to this instruction.

13 MR. CORRIGAN: All right.

14 THE COURT: It created some problem, as you can
15 imagine.

16 MR. CORRIGAN: Lots of excitement.

17 THE COURT: Well, I mean, it really meant tearing
18 apart -- this was back in the days when they were paper
19 files, it meant tearing apart the court files the way
20 that order read. I had signed it without appreciating
21 it allowed them to do that. So they saw their way
22 clear not to cause the clerk's office to go into
23 rebellion.

24 All right.

25 Thank you all very much.

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HEARING ADJOURNED

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CERTIFIED TRUE AND CORRECT TRANSCRIPT

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GILBERT F. HALASZ, RMR

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Official Court Reporter

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